

REMARKS

Claims 1, 2, and 4-35 were pending. By this amendment, claims 1, 2, and 4-35 are cancelled without prejudice to their being pursued in the present application or in a related patent application. Therefore, prior objections and rejections pertaining to these claims are rendered moot. Claims 49-57 are added and are currently pending.

Telephone Interview

Applicants thank the Examiner for the constructive telephone interview conducted on July 30, 2003 between Examiner Sullivan and Applicants' Attorney Beth E. Arnold and Applicants' Agent Scott E. Kamholz. During the interview, the Examiner agreed that a declaration under 37 C.F.R. § 1.132 by inventor Seth P. Finklestein, describing the administration of hematopoietic stem cells and an FGF, would be considered in conjunction with the filing of this Amendment.

Claims are Enabled under 35 U.S.C. § 112, first paragraph

The Examiner has acknowledged that Applicants' disclosure is enabling for the amelioration of the effects of CNS ischemic damage and that the disclosure is enabling for administration of FGF (*see* Final Office Action, March 7, 2003, page 4).

The Examiner also acknowledged that claim 5, drawn to administration of hematopoietic stem cells, was nonobvious over the art of record (*see* Final Office Action, page 3).

Accordingly, Applicants have presented new claim 49, which recites a method of treating a subject with CNS ischemic damage, the method including administering to the subject hematopoietic stem cells and an FGF.

Applicants note that the Examiner rejected claim 5, which was directed to hematopoietic stem cells, as lacking enablement. However, the Examiner did not specifically address the basis for concluding that claim 5 lacks enablement. Applicants respectfully submit that the application as filed would have enabled one of ordinary skill in the art to practice the method set forth in claim 1 without undue experimentation. *See*, for example, pages 14-45 of the specification as filed.

In addition, Applicants submit herewith a Declaration under 37 C.F.R. § 1.132 by inventor Seth P. Finklestein, stating that Applicants have in fact treated a rat with CNS ischemic damage by administering hematopoietic stem cells and an FGF according to the techniques described in the application, and that the conjoint administration of the hematopoietic stem cells and the FGF ameliorated effects of CNS ischemic damage. Accordingly, based on the teachings of the application, one of skill in the art would have been able to practice the methods set forth in claim 49 without undue experimentation. Therefore, Applicants respectfully request reconsideration and withdrawal of the enablement rejection under 35 U.S.C. § 112, first paragraph, with respect to the pending claims.

New claims 56 and 57 are Enabled under 35 U.S.C. § 112, first paragraph

New claim 56 is drawn to administering stem cells obtained from blood and an FGF, while new claim 57 is drawn to administering fetal blood cells with an FGF. Applicants submit that these claims are also enabled by the specification. *See*, for example, page 26 of the specification, lines 5-14, which describes obtaining stem cells from blood. *See also*, for example, page 29, line 16, which describes fetal blood. In

addition, the Declaration of inventor Seth P. Finklestein states that Applicants have in fact treated a rat with CNS ischemic damage either by administering stem cells obtained from blood and an FGF or by administering fetal blood cells and an FGF. Accordingly, based on the teachings of the application, one of skill in the art would have been able to practice the methods set forth in claim 56 and claim 57 without undue experimentation.

Claims are nonobvious 35 U.S.C. § 103(a)

As discussed above, the Examiner acknowledged that claim 5, drawn to administration of hematopoietic stem cells, is nonobvious over the art of record. Accordingly, new claim 49 recites administration of hematopoietic stem cells. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a) with respect to the pending claims.

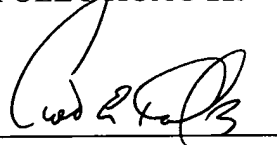
CONCLUSION

In light of the above, Applicants submit that the claims of the above-referenced application are in condition for allowance. Applicants therefore respectfully request entry of this Amendment and allowance of all pending claims so that this case can pass to issue.

No fees are believed due in connection with the filing of this Amendment except for the fee that accompanies the Petition for a Two Month Extension of Time. However, the Commissioner is hereby authorized to charge or credit to our Deposit Account, No. **06-1448**, any fees due or overpayment thereof, respectively, in connection with the filing of this Amendment.

If any questions remain, Applicants invite the Examiner to contact the undersigned at the telephone number listed below.

Respectfully submitted,
FOLEY HOAG LLP



Scott E. Kamholz
Reg. No. 48,543
Applicants' Agent
acting under 37 C.F.R. § 1.34(a)

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Patent Group
FOLEY HOAG LLP
155 Seaport Blvd
Boston MA 02210-2600
Tel: (617) 832-1230
Fax: (617) 832-7000